

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 1755 OF 2024**

Umesh Radhai Saroj	...	Applicant
vs.		
The State of Maharashtra and another	...	Respondents

Ms. Priyanka S. Thakur for applicant.

Mr. R. M. Pethe, APP for respondent No.1-State.

**CORAM : MANISH PITALE, J.
DATE : 05th JULY, 2024**

P.C. :

. Heard learned counsel for the applicant and the learned APP for the respondent-State.

2. At the outset, the learned APP points out that since offences under the provisions of Protection of Children from Sexual Offences Act, 2012 (POCSO Act) have been registered against the applicant, issuing notice to the victim would be necessary. In fact the victim is joined as respondent No.2 in the present application.

3. The learned counsel for the applicant submits that notice may be issued to respondent No.2. But, in the meanwhile, this Court may consider granting interim protection to the applicant in the peculiar facts of the present case. The learned counsel for the applicant has referred to the contents of the FIR and it is further pointed out that in a separate FIR registered at the behest of co-accused No.1 against the applicant for offence

of rape and other offences, the applicant was granted regular bail by the Sessions Court. It is submitted that considering the facts and circumstances of the present case and the primary role of co-accused No.1, who is the mother of the victim, this Court may consider granting interim protection.

4. The learned APP does not dispute the fact that the punishment for offence under Section 12 of the POCSO Act is imprisonment, which may extend to three years.

5. A perusal of the material on record shows that this is a peculiar case, where the applicant as well as co-accused No.1 are both married individuals and *prima facie*, they appear to be in an extramarital relationship. In fact, such *prima facie* finding is given by the Sessions Court itself, while granting regular bail to the applicant in connection with FIR No.165 of 2021 registered at the behest of co-accused No.1 against the applicant for offences under Section 376(2)(n), 307, 509, 323 and 506 of the Indian Penal Code, 1860 (IPC).

6. The allegations on the basis of which the present FIR bearing No.0243 of 2024 dated 14.05.2024 was registered at Police Station Uran, District Navi Mumbai for offences under Section 34 of the IPC and Sections 11(i), 11(v), 11(vi) and 12 of the POCSO Act, are that the applicant and the co-accused No.1 i.e. the mother of the victim child gave mobile phone to the victim child and made him record the sexual activities undertaken by the applicant and co-accused No.1. On this basis, offences pertaining to sexual harassment of the child under the aforesaid provisions of the POCSO Act, have been registered. It is indeed shocking that such allegations are made against the mother of the child also. There is nothing to indicate that the mother of the

child i.e. co-accused No.1 has been taken into custody or that efforts are being made to take her into custody. The maximum sentence for offence under Section 12 of the POCSO Act is upto 3 years and *prima facie*, it appears that the applicant alongwith co-accused No.1, may have together undertaken the activities that have led to registration of the present FIR. As long as the applicant does not contact the victim child and co-operates with the investigation, this Court is inclined to consider granting interim protection. This is particularly in the backdrop of the fact that in connection with the other FIR i.e. FIR No.165/2021, the applicant was arrested, his mobile phone was taken into custody by the police and he was released only upon being granted regular bail. There is nothing to indicate that the applicant has violated any of the conditions imposed upon him, while granting regular bail.

7. In the peculiar facts and circumstances of the present case, since the mother of the victim child herself is an accused, it would be appropriate that an advocate from the panel of lawyers, maintained by the High Court Legal Services Authority is appointed to appear on behalf of respondent No.2.

8. Accordingly, High Court Legal Services Committee is directed to appoint an advocate from its panel to represent respondent No.2. The applicant shall serve an additional set of papers on the office of the High Court Legal Services Committee within one week from today.

9. In the meanwhile, the following interim order is passed:

- (i) Till the next date of listing, in the event the applicant is arrested in connection with FIR No.0243 of 2024 dated 14.05.2024 registered at Police Station Uran, District Navi Mumbai, he shall be released on bail

on furnishing PR Bond of ₹ 25,000/- (Rupees Twenty-five Thousand only) and one or two sureties in the like amount to the satisfaction of the trial Court;

- (ii) the applicant shall not in any manner, contact the victim child i.e. respondent No.2 herein;
- (iii) the applicant shall remain present before the Investigating Officer on 08.07.2024 between 10:00 a.m. and 12:00 noon and thereafter, as and when the Investigating Officer calls upon him to remain present;
- (iv) the applicant shall not tamper with the evidence of the prosecution in any manner. He shall not influence the informant, witnesses and other persons concerned with the case;
- (v) The applicant shall co-operate with the investigation and also in the proceedings before the trial court.

10. In the event, the applicant violates any of the conditions specified in this order, it shall be liable to be cancelled.

11. List on 19.07.2024, High on Board.

(MANISH PITALE, J)

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Priya Kambli